

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES C. GARRETT,)	
)	
Petitioner,)	CASE NO. C05-898RSM
)	
v.)	
)	
ROB McKENNA,)	REPORT AND RECOMMENDATION
)	
Respondent.)	
_____)	

Petitioner James Garrett is currently in the custody of the Washington Department of Corrections serving the community custody portion of a 2002 King County Superior Court judgment and sentence. He has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in which he seeks to challenge his 2002 King County Superior Court conviction on a charge of second degree assault while armed with a deadly weapon other than a firearm.

Respondent has filed an answer to petitioner's petition in which he argues that the petition is subject to dismissal because (1) petitioner failed to name a proper respondent, (2) petitioner procedurally defaulted on his claims in the state courts, and (3) the petition is time barred. While the record before this Court appears to support each of respondent's arguments, the Court need only address respondent's first argument.

1 Petitioner named Rob McKenna, Washington State Attorney General, as the sole respondent in
2 his federal habeas petition. A petitioner for habeas corpus relief must name the state officer having
3 custody of him or her as the respondent to the petition. Failure to name the petitioner's custodian
4 deprives federal courts of personal jurisdiction. *Stanley v. California Supreme Court*, 21 F.3d 359,
5 360 (9th Cir. 1994)(citations omitted). The Washington State Attorney General is not petitioner's
6 current custodian. Rather, petitioner's current custodian is the individual responsible for supervising
7 his current term of community custody. As petitioner has not named a proper respondent in his
8 federal habeas petition, this Court lacks jurisdiction over the petition. Accordingly, this Court
9 recommends that petitioner's federal habeas petition be dismissed without prejudice. A proposed
10 order accompanies this Report and Recommendation.

11 DATED this 29th day of August, 2005.

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14 MONICA J. BENTON

15 United States Magistrate Judge
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